



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 10 2015

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Bill Derwin, President
Terminix International Company, L.P. (AKA Terminix)
860 Ridge Lake Boulevard
Memphis, TN 38120-9434

Terminix
c/o Prestige Pest Management Corp.
P.O. Box 1860
Carolina, PR 00984-1860
Attn: President

Re: Request to Provide Information

Dear Sir or Madam:

As a result of the apparent pesticide poisoning suffered by a family of four in St. John, U.S. Virgin Islands on or about March 18-20, 2015 and subsequent inspections and response actions taken by the Virgin Islands Department of Planning and Natural Resources ("DPNR") and the Region 2 office of the United States Environmental Protection Agency ("EPA"), EPA has reason to believe that Terminix may have violated the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136, et seq. Specifically, EPA has reason to believe that Terminix has used the restricted use pesticide Meth-O-Gas Q (EPA Reg. No. 5785-41) in a manner inconsistent with its label, in violation of Section 12(a)(2)(G) of FIFRA. This incident suggests Terminix may be making registered pesticides classified for restricted use, specifically products with Methyl Bromide as an active ingredient, available for use other than in accordance with Section 3(d) of FIFRA, in violation of Section 12(a)(2)(F) of FIFRA. Moreover, as an applicator and distributor of a Class I, Group VI controlled substance, Methyl Bromide, Terminix is subject to the reporting and recordkeeping requirements of Title VI of the Clean Air Act ("CAA"), 42 U.S.C. § 7671, et seq., and the implementing regulations at 40 C.F.R. Part 82.

EPA, in coordination with DPNR, is investigating the incident on St. John and other possible misuses of pesticides containing Methyl Bromide in the U.S. Virgin Islands, and may send Terminix a separate Information Request Letter as part of that investigation. This information request letter is focused on Terminix activities in Puerto Rico.

Pursuant to Section 8(b) of FIFRA, 7 U.S.C. § 136f(b), and for the purposes of enforcing FIFRA, any distributor, carrier, or dealer of pesticides shall, upon request of EPA, furnish or permit EPA to have access to and copy all records showing the delivery, movement, or holding of such pesticide. In addition, Section 9(a)(1) of FIFRA, 7 U.S.C. § 136g(a)(1), authorizes EPA and other government officials to enter at reasonable times any establishment or other place where pesticides or devices are held for distribution or sale, for the purpose of inspecting and obtaining samples of any pesticides or devices,

packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices.

EPA has performed inspections of the Terminix location in Puerto Rico. One purpose of those inspections was to collect information requested in this letter. Given the urgent and serious nature of the St. John incident and the possibility of similar pesticide misuse in Puerto Rico, we request that Terminix provide the information requested in this letter, in lieu of that portion of the inspections.

Pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414, for the purpose of determining whether any violations of the CAA have occurred, the EPA Administrator is authorized to require any person who is subject to any requirement of the CAA to establish and maintain such records, make such reports, and provide such other information as the Administrator may reasonably require. Your provision of the information and records sought by this letter pertaining to the import, distribution, and application of Methyl Bromide is necessary for determining compliance with Sections 603 and 604(d)(5) of the CAA, 42 U.S.C. §§ 7671b and 7671c(d)(5). Therefore, in accordance with Section 114(a)(1), providing this information is mandatory. Failure to provide the required information in a timely manner may lead to civil action to obtain compliance or to recover a civil penalty in accordance with Section 113 of the CAA, 42 U.S.C. § 7413.

EPA also has authority to seek criminal penalties from any person who knowingly makes any false statement, representation, or certification. Even if you fully comply with this letter, you may still be subject to administrative, civil, or criminal enforcement action as provided by federal law.

EPA requests that your company submit to Mr. John Gorman, Chief, Pesticide & Toxic Substances Branch, within fourteen (14) business days of receipt of this letter, written answers and documents which are responsive to the following questions. (Mr. Gorman's contact information, and the requested format of the response, is specified at the end of this letter). This request is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq.

Corporate Information

1. Please describe the corporate form and structure of the following entities; the relationships between them; and the role, function, and purpose of each entity within the larger body of entities constituting "Terminix":
 - a) Terminix International, Inc.
 - b) Terminix International Company, L.P.
 - c) ServiceMaster Consumer Services, L.P.
 - d) ServiceMaster Global Holdings, Inc.
 - e) The ServiceMaster Company, LLC
 - f) Terminix Commercial
 - g) Terminix Pest Control Systems
 - h) Prestige Pest Management Corp.
 - i) Any other entity under your control or direction whose roles and responsibilities include the purchase, import, receipt, sale, distribution, application, use, storage, or handling, in Puerto Rico, of Methyl Bromide or Methyl Bromide containing pesticides.

2. a. Does Terminix have any licensees, franchisees, subsidiaries, branches, divisions, or affiliates in Puerto Rico not identified in question 1, whose roles and responsibilities include the purchase, import, receipt, sale, distribution, application, use, storage, or handling of Methyl Bromide or Methyl Bromide containing pesticides?
- b. If the answer to 2.a. is yes, identify those entities and their respective addresses, a contact person for each, and describe their corporate or organizational form and the relationship between them and the companies referred to in question 1 above.
3. To the extent not already identified in your responses to questions 1 and 2, please identify all Terminix companies (and any other companies, firms or persons using the Terminix name) operating in the Commonwealth of Puerto Rico. Describe each entity's activities in Puerto Rico, its roles and responsibilities, and its relationship to Terminix.

Sale or Distribution of Methyl Bromide and Pesticides Containing Methyl Bromide

4. a. Has Terminix distributed or sold any Methyl Bromide or pesticides containing Methyl Bromide to any entity or person in Puerto Rico since January 1, 2013?
- b. If the answer to question 4.a. is yes, then for each such sale or distribution since January 1, 2013, provide a copy of the sale or distribution records and describe the purpose for which the sale or distribution was made. Include the date of the sale or distribution, the quantity sold or distributed, the party to whom it was sold or distributed, where it was shipped, copies of any certifications received from a purchaser or recipient, and, if a pesticide, a copy of the label or the product's name, EPA registration number, and the producer's EPA establishment number.

Use of Pesticides Containing Methyl Bromide in Puerto Rico

5. a. From January 1, 2013 to the present day (i.e., April 10, 2015), please identify all residences, dwellings, work places, public places (e.g., coliseum, stadium, arena) and any other enclosed area, in Puerto Rico, where Terminix used (i.e., applied) pesticides containing Methyl Bromide. Please exclude agricultural uses permitted by the instructions on the product label, and quarantine and pre-shipment applications which were supervised by USDA APHIS.
- b. For each location identified in your answer to question 5.a. above, include the complete, specific address of the location (e.g., if an apartment building or other multiple-unit building, then specify the precise apartment or unit).
6. For each of the locations and applications of pesticides containing Methyl Bromide which you identified in your answer to question 5, above, please answer the following questions and provide documentation in response to the requests:
 - a) State the exact date of the application.

- b) State the name and address of the Terminix entity or office that performed each application. Identify with specificity for which "Terminix" entity the answer is being provided.
- c) Identify the distributor and/or supplier from whom Terminix obtained the pesticide applied and provide purchase records, sales receipts or invoices from the distributor and/or supplier.
- d) Identify the Terminix employee(s) responsible for deciding which pesticide product to use at each application.
- e) Identify all Terminix employee(s) present at each application and each one's role and responsibility with regard to the application.
- f) Provide proof of the pesticide applicator's certification(s).
- g) Identify the customer(s)/client(s) who requested each of the above-identified applications.
- h) Provide a copy of the customer/client request for each application.
- i) State the purpose of each application (i.e., target pest and commodity, structure or object to be treated).
- j) Provide the application records and invoices for each application, including but not limited to information on (i) the location, (ii) date, (iii) time, (iv) name of pesticide used, (v) quantity of pesticides applied, (vi) percentage of active ingredient per unit of the pesticide use, (vii) method of application, (viii) application rate, (ix) volume, and (x) restricted entry interval (REI).
- k) List the pesticide product name, EPA registration number and the producer's EPA establishment number for all pesticides containing Methyl Bromide which were used in each application.
- l) Provide a copy of the entire label(s) of the pesticide(s) containing Methyl Bromide that was used in each application.
- m) Was anyone other than the applicator at the location at the time of application or soon thereafter? If so, provide the name(s) and contact information for each such person.
- n) Identify any accidents, incidents, injuries or customer complaints resulting from the use of a pesticide containing Methyl Bromide during or after an application.

- o) For each application, describe any procedures followed other than the directions and requirements on the product label.
 - p) For any applications of a Q product, provide documentation of supervision by an appropriate regulatory or supervisory agent at the time of the application.
7. During the past three years, to what extent did Terminix comply with the recordkeeping and reporting requirements of 40 CFR Section 82.13(z)(1) and (2), with respect to the Methyl Bromide purchased or received for application in Puerto Rico? Those regulations provide as follows:

(1) Recordkeeping—Applicators. Every applicator of class 1, Group VI controlled substances produced or imported solely for quarantine and pre-shipment applications under the exemptions of this subpart must maintain, for every application, a document from the commodity owner, shipper or their agent requesting the use of class 1, Group VI controlled substances citing the regulatory requirement that justifies its use in accordance with definitions in this subpart. These documents shall be retained for 3 years.

(2) Reporting—Applicators. Every applicator of class 1, Group VI controlled substances who purchases or receives a quantity of class 1, Group VI controlled substance that was produced or imported solely for quarantine and pre-shipment applications under the exemptions in this subpart shall provide the distributor of the Methyl Bromide, prior to shipment of the class 1, Group VI controlled substance, with a certification that the quantity of controlled substances will be used only for quarantine and pre-shipment applications as defined in this subpart.

In your answer to this question, list each instance of compliance or noncompliance with the above requirements, and provide documentation of any compliance, including but not limited to any certification(s) provided to the distributor of the quantity purchased.

Pursuant to the regulations at 40 CFR, Part 2, Subpart B, you are entitled to assert a business confidentiality claim covering all or any part of the submitted business information as defined in 40 CFR 2.201(c). Appendix C to this letter specifies the assertion and substantiation requirements for business confidentiality claims. Asserting a business confidentiality claim does not relieve your obligation to respond fully to this letter. Failure to assert such a claim makes the submitted information subject to public disclosure upon request and without further notice to you pursuant to the Freedom of Information Act, 5 U.S.C. Section 552. Information subject to a business confidentiality claim may be made available to the public only to the extent, and by means of the procedures, set forth in the above cited regulation.

Your response must be accompanied by the certification found in Appendix D to this letter, signed by a responsible company official or representative. To aid in our electronic record keeping efforts, please provide your response to this request for information in electronic format whenever possible and please

provide any data in Microsoft Excel compatible software. If you must use paper, please do so without staples. Paperclips, binder clips and three ring binders are acceptable.


All submissions required by this request shall be addressed to:

John Gorman
Branch Chief, Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency – Region 2
2890 Woodbridge Avenue, Building 10
Edison, NJ 08837-3679

and if possible, should be e-mailed to him at Gorman.John@epa.gov

If you have any questions relating to this matter, please contact John Gorman at 732-321-6765 or Gorman.John@epa.gov. Attorneys should contact Bruce Aber of USEPA's Office of Regional Counsel at 212-637-3224 or Aber.Bruce@epa.gov

Thank you for your cooperation in this matter.


Susan Chinkman, Director
Susan Chinkman, Director
Office of Civil Enforcement

ENCLOSURES

Appendix A – Definitions
Appendix B - Instructions
Appendix D- CBI
Appendix - Certification

Appendix A

DEFINITIONS

For the purpose of responding to this Information Request, the following definitions shall apply:

1. "Terminix," "You," or "Your" means Terminix International Company, L.P. ("Terminix"), including but not limited to its predecessors, successors, subsidiaries, parent companies, affiliates, d/b/a, divisions, branches, offices, franchises (e.g. franchisees), licensees, facilities, committees, trusts, partnerships, and joint ventures in which it has any interest; all entities for which it is acting as an agent or contractor; and its past or present officers, directors, trustees, managers, employees, agents, consultants, contractors, attorneys, representatives, and any other persons acting on its behalf; and including but not limited to the following:

Terminix International, Inc.

Terminix International Company, L.P.

Terminix Commercial

Terminix Pest Control Systems

ServiceMaster Consumer Services, L.P.

ServiceMaster Global Holdings, Inc.

The ServiceMaster Company, LLC

Prestige Pest Management Corp.

And any other entity under your control or direction whose roles and responsibilities include the purchase, import, receipt, sale, distribution, application, use, storage, or handling of Methyl Bromide

In answering the request, identify with specificity for which "Terminix" entity each answer is being provided. All questions apply to Terminix company-owned locations and to those owned or managed by licensees, franchisees, or subsidiaries.

2. Pursuant to Section 2(s) of FIFRA, 7 U.S.C. § 136(s), "Person" as used herein, in the plural as well as the singular, means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, or other business or legal entity, and includes any affiliate, franchisee, parent, or subsidiary.
3. Pursuant to 40 C.F.R. § 82.3, "Person" also means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent or employee thereof.
4. Pursuant to 40 C.F.R. § 82.3, "Applicator" means the person who applies methyl bromide.
5. Pursuant to 40 C.F.R. § 82.3, "Distributor" of methyl bromide means the person directly selling a class I, Group VI, controlled substance to an applicator.

6. "Employee" shall mean any common law employee, contractor, sub-contractor or independent contractor, including but not limited to pesticide "handler[s]," as that term is defined in 40 C.F.R. § 170.3 and "certified applicator[s]," as that term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1), working for Terminix in any capacity.
7. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), "To Distribute or Sell" means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to delivery.
8. Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), "Produce" means to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of FIFRA, any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.
9. Pursuant to 40 C.F.R. § 82.3, "Individual Shipment" means the kilograms of a used controlled substance for which a person may make one (1) US Customs entry as, as identified in the no-objection letter from the Administrator under sections 82.13(g) and 82.24(c)(4).
10. Pursuant to 40 C.F.R. § 82.3, "Preshipment Applications" are those non-quarantine applications applied within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country.
11. Pursuant to 40 C.F.R. § 82.3, "Quarantine Applications" are treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases) or to ensure their official control under specified circumstances.
12. --- "And" as well as "or" shall be construed either conjunctively or disjunctively as necessary to bring within the scope of this Information Request all information which might otherwise be construed to be outside its scope.
13. "Furnish," "describe," or "indicate" means turning over to U.S. EPA either original or duplicate copies of the requested information in the possession, custody, or control of the Respondent. Where specific information has not been memorialized in any document but is nonetheless responsive to a request, you must respond to the request with a written response. If such requested information is not in your possession, custody, or control then indicate where such information or documents may be obtained.
14. "Document" means any written, recorded, or graphic material of any kind, whether prepared by you or by any other person that is in your possession, custody, or control. The term includes but is not limited to: contracts, agreements, certificates, permits, letters, facsimiles, telegrams, interoffice communications, email messages and attachments, memoranda, notes, books, files, records, reports, evaluations, proposals, analyses, notebooks, surveys, lists, outlines, drafts, schedules, pamphlets, newsletters, flyers, charts, logs, tabulations, compilations, telephone books or messages, visitor books, calendar or

diary entries, desk or appointment calendars, day planners, business cards, minutes or notations or records of meetings or conferences, notes or memos or other records of telephone or other conversations or communications, ledgers, bills, invoices, purchase orders, shipping orders, statements of receipt or shipment, work requests, work orders, scribbles, marginalia, drawings, depictions, maps, testing data, receipts, photographs, diagrams, illustrations, plans, blueprints, schematics, photostats, microfilm, microfiche, audio and video tape or disc recordings, and computer printouts. It also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers -- including but not limited to information stored on a computer hard drive, magnetic tape, cassette, disk, CD, Internet Service Provider or network. Any such document is to be produced in usable form, along with instructions for reading such data. As indicated in the preceding section, the term "document" includes the original (or a copy thereof if the original is not available) and all copies that differ in any respect from the original, or that bear any handwriting, notation, marking, or information not on the original.

15. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136, et seq. (FIFRA) or the Clean Air Act, 42 U.S.C. § 7401, et seq., in which case the statutory or regulatory definitions shall apply.

Appendix B**INSTRUCTIONS**

1. Provide a separate response to each of the questions set forth in this Information Request.
2. Precede each answer with the number in the Information Request to which it corresponds.
3. In answering each request, identify with specificity for which "Terminix" entity the answer is being provided.
4. In answering each request, identify all contributing sources of information.
5. Documents to be produced include all documents in your possession, custody or control, wherever located, including documents in the possession, custody or control of your officers, directors, trustees, managers, employees, agents, consultants, contractors, attorneys, representatives, and any other persons acting on your behalf. Without limitation on the term "control," a document is deemed to be in your control if you have the right to secure that document or a copy thereof from another person.
6. All requests for documents include the final version of the document; all copies which are not identical, whether by reason of handwritten notes or otherwise; and all drafts.
7. All documents that respond, in whole or in part, to any part or clause of any paragraph of this Information Request shall be produced in their entirety, including all attachments and enclosures. All documents that are attached to documents called for by this Information Request shall be produced, even if they are not otherwise responsive to this Information Request.
8. If information not known or not available to the Respondent as of the date of submission of its response should later become known or available, Respondent must supplement its response to U.S. EPA. Moreover, should the Respondent find at any time after submitting its response that any portion of the submitted information is false, misleading, or misrepresents the truth, Respondent must notify U.S. EPA as soon as possible.
9. To aid in our electronic record keeping efforts, please provide your response to this request for information in electronic format whenever possible and please provide any data in Microsoft Excel compatible software. If you must use paper, please do so without staples. Paperclips, binder clips and three ring binders are acceptable.
10. Your response must be accompanied by the enclosed certification (Appendix D), signed by a responsible company official or representative.

Appendix C

Confidential Business Information (CBI) Assertion and Substantiation Requirements

A. Assertion Requirements

You may assert a business confidentiality claim covering all or part of the information requested in the attached letter, as provided in 40 C.F.R. § 2.203(b). To make a confidentiality claim, submit the requested information and indicate that you are making a claim of confidentiality. Any document over which you make a claim of confidentiality should be marked by placing on or attaching to the information, at the time it is submitted to United States Environmental Protection Agency (EPA), a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret” or “proprietary” or “company confidential” and a date, if any, when the information should no longer be treated as confidential. Information covered by such a claim will be disclosed by the EPA only to the extent permitted and by means of the procedures set forth by Section 114(c) of the Clean Air Act (the Act) and 40 C.F.R. Part 2. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified. EPA will construe the failure to furnish a confidentiality claim with your response to the attached letter as a waiver of that claim, and the information may be made available to the public without further notice to you.

Please segregate personnel, medical and similar files from your responses and include that information on separate sheet(s) marked as “Personal Privacy Information” given that disclosure of such information to the general public may constitute an invasion of privacy.

B. Substantiation Requirements

All confidentiality claims are subject to EPA verification and must be made in accordance with 40 C.F.R. § 2.208 which provides in part that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so; and that the information is not and has not been reasonably obtainable by legitimate means without your consent.

Pursuant to 40 C.F.R. Part 2, Subpart B, EPA may at any time send you a letter asking you to substantiate fully your CBI claim. You must provide EPA with a response within the number of days set forth in the EPA request letter. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and EPA may release the information. EPA will ask you to specify which portions of the information you consider confidential. **You must be specific by page, paragraph, and sentence when identifying the information subject to your claim.** Any information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you. For each item or class of information that you identify as being subject to CBI, EPA will ask you to answer the following questions, giving as much detail as possible:

- I. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date; until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
- II. Information submitted to EPA becomes stale over time. Why should the information you

claim as confidential be protected for the time period specified in your answer to question #1?

- III. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
- IV. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
- V. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
- VI. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
- VII. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, explain whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.
- VIII. Any other issue you deem relevant.

If you receive a request for a substantiation letter from the EPA, you bear the burden of substantiating your confidentiality claim. Conclusory allegations will be given little or no weight in the determination. In substantiating your CBI claim(s), EPA will require you to bracket all text so claimed and mark it "CBI." Information so designated will be disclosed by EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information as confidential, it may be made available to the public without further notice to you.

Appendix DCERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the documents and other information submitted in response to this information request; that based on my inquiry of the persons directly responsible for gathering the information the information is true, accurate and complete; and that all documents submitted herewith are true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment.

Signature

Name

Title

Employer